



Order Filed on November 9, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

WOLPER LAW GROUP, LLC
27 Madison Avenue, Suite 130
Paramus, New Jersey 07652
(201) 880-9186 (Telephone)
(201) 880-9188 (Facsimile)
Adam D. Wolper (adam@wolplaw.com)
Attorneys for Marlon Garcia, Creditor

In re:

HOLLISTER CONSTRUCTION
SERVICES, LLC

Debtor.

Chapter 11

Case No. 19-27439 (MBK)

**ORDER GRANTING MOTION OF MARLON GARCIA
FOR RELIEF FROM AUTOMATIC STAY TO
CONTINUE WITH STATE COURT PERSONAL INJURY
LITIGATION TO THE EXTENT OF INSURANCE PROCEEDS**

The relief set forth on the following pages, numbered two (2) through and including four (4), is hereby **ORDERED**.

DATED: November 9, 2020


Honorable Michael B. Kaplan
United States Bankruptcy Judge

Page: 2
Debtor: Hollister Construction Services, LLC
Case No.: 19-27439 (MBK)
Caption: ORDER GRANTING MOTION OF MARLON GARCIA FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE WITH STATE COURT PERSONAL INJURY LITIGATION TO THE EXTENT OF INSURANCE PROCEEDS

THIS MATTER having been opened to the Court upon the motion of Marlon Garcia (“**Movant**”) for entry of an order granting the Movant relief from the automatic stay to continue with his state court litigation against the Debtor, solely to the extent of the Debtor’s insurance proceeds (the “**Motion**”); and the non-Debtor parties in the State Court Action having received notice of the proposed form of this Order and having made no objection thereto; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, as amended on September 18, 2012; and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of the Motion being sufficient under the circumstances; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED as follows:

1. The automatic stay of section 362(a) of the Bankruptcy Code be, and hereby is, modified to allow Movant to proceed with the personal injury lawsuit filed in the Supreme Court of the State of New York, New York County, captioned *Marlon Garcia v. Citymeals-on-Wheels Property and Hollister Construction Services, LLC*, Docket No. 160938/2016 (the “**State Court Action**”) against the Debtor for the limited and sole purpose of pursuing and/or collecting any judgment from the proceeds of any applicable insurance coverage, provided that: (a) nothing contained herein shall be deemed a waiver of any rights or defenses to coverage of any insurer under any insurance policies issued to the Debtor that may be implicated by the State Court Action;

Page: 3
Debtor: Hollister Construction Services, LLC
Case No.: 19-27439 (MBK)
Caption: ORDER GRANTING MOTION OF MARLON GARCIA FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE WITH STATE COURT PERSONAL INJURY LITIGATION TO THE EXTENT OF INSURANCE PROCEEDS

(b) nothing herein shall be deemed or interpreted to expand the insurance coverage or applicability of such coverage that may be available with respect to the State Court Action; and (c) any self-insured retention provisions of any such insurance policies shall remain in full force and effect, provided that the Debtor's estate shall have no obligation under any of the insurance policies to spend any money or incur any cost in defense of the State Court Action .

2. Said automatic stay is modified further to allow the non-Debtor parties in the State Court Action to proceed with their claims against the Debtor, if any, for the limited and sole purpose of pursuing and/or collecting any judgment from the proceeds of any applicable insurance coverage and subject to the limitations in Paragraph 1 above.

3. Movant and the non-Debtor parties in the State Court Action waive any right to recover or seek to recover any deductible or self-insured retention from the Debtor, and they waive their right to file or assert any claim or proof of claim against the Debtor and its estate. Any proof of claim filed by Movant or any of the non-Debtor parties regarding the State Court Action against the Debtor and its estate shall be deemed expunged and disallowed upon entry of this Order.

4. In the event there is insufficient insurance coverage to satisfy in full all claims, recoveries, settlements, judgments, and any and all other sums awarded in connection with all claims asserted against the Debtor's insurance policy for the same applicable policy year as the claims asserted by Movant and the non-Debtor parties in the State Court Action, Movant and the non-Debtor parties in the State Court Action agree to share the available insurance proceeds *pro rata* with any other claimants whose claims are asserted against or implicated the same policy year.

5. This Order shall be immediately effective and enforceable upon its entry.

Page: 4
Debtor: Hollister Construction Services, LLC
Case No.: 19-27439 (MBK)
Caption: ORDER GRANTING MOTION OF MARLON GARCIA FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE WITH STATE COURT PERSONAL INJURY LITIGATION TO THE EXTENT OF INSURANCE PROCEEDS

6. The parties are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

7. This Court shall retain jurisdiction to hear and decide any and all disputes related to or arising from the implementation, interpretation or enforcement of this Order.